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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,555	01/25/2002	Hidekazu Baba	FUJA 19.379	8863
26304	7590	06/15/2006	EXAMINER	
KATTEN MUCHIN ROSENMAN LLP			NGUYEN, STEVEN H D	
575 MADISON AVENUE			ART UNIT	
NEW YORK, NY 10022-2585			PAPER NUMBER	
			2616	

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/056,555

Applicant(s)

BABA, HIDEKAZU

Examiner

Steven HD Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-17 is/are rejected.
- 7) ☒ Claim(s) 11-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Ma (USP 5953338).

Regarding claim 17, Ma discloses a bandwidth managing apparatus (Fig 1B, Ref 160) comprising reception means that receives, by cooperating with a plurality of data repeater equipments (Fig 1B, Ref 130), a request for altering a bandwidth setting from any one of the plurality of data repeater equipments (Col. 6, line 43 to col. 7, line 38, col. 8, lines 49-56, Col. 12, lines 56-65); decision means that holds a plurality of conditions relating to the bandwidth setting, and decides whether the request satisfies all the conditions or not (Col. 13, lines 32-58); and response means that makes response to the data repeater equipment to permit the request when the request satisfies all the conditions as a result of the decision made, and not permit the request when the request does not satisfy all the conditions (Col. 6, line 43 to col. 7, line 38).

3. Claims 1, 5 and 9-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Goguen (USP 6665273).

Regarding claim 1, Goguen discloses a data repeater equipment having a bandwidth control function comprising traffic amount holding means that holds a traffic amount measured

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at every short-term period (Fig 7, Ref 772); and bandwidth adjusting means (Fig 7, Ref 780, 784, 782 and 785) that calculates an average traffic amount at every long-term period based on the traffic amount held in the traffic amount holding means (col. 8, lines 14-31), compares a bandwidth value corresponding to the calculated average traffic amount with a first preset bandwidth value (col. 8, lines 33-53), thereby to obtain a difference between the two , and re-sets the first bandwidth value to a second preset bandwidth value that minimizes this difference (col. 8, lines 33-53).

Regarding claim 5, Goguen discloses a repeater processing unit that performs at least the repeat processing of a packet to be handled and a bandwidth control function, whereby the bandwidth adjusting means executes the bandwidth control to be applied to the repeater processing unit (Fig 7, Ref 780).

Regarding claim 9, Goguen discloses the bandwidth adjusting means calculates the long-term average traffic amount using a predetermined algorithm (Col. 8, line 64 to col. 9, lines 3; Figs 9-10 for determining average count bytes).

Regarding claim 10, Goguen discloses the data repeater equipment executes the predetermined algorithm based on a predetermined program, with the predetermined program replaceable with any optional one of a plurality of kinds of programs, without changing the structure of the data repeater equipment (Col. 8, line 64 to col. 9, lines 3).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 6-8 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goguen in view of Chen (USP 6487170).

Regarding claim 2, Goguen fail to fully disclose alteration decision means that decides whether it is possible to permit the alteration of the first preset bandwidth value to the second preset bandwidth value or not, thereby to either permit or inhibit the bandwidth adjusting means to execute the adjustment, based on the decision made. In the same field of endeavor, Chen discloses a method and system for alteration decision means that decides whether it is possible to permit the alteration of the first preset bandwidth value to the second preset bandwidth value or not, thereby to either permit or inhibit the bandwidth adjusting means to execute the adjustment, based on the decision made (col. 7, lines 16-39).

Since, a method and system for accepting or rejecting the request for bandwidth is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for accepting or rejecting a request for a bandwidth as disclosed by Chen into Gorguen's method and system. The motivation would have been to prevent data loss of the other flows.

Regarding claim 3, Goguen fails to disclose an interface that cooperates with the bandwidth determination managing apparatus that integrally manages the bandwidths of a plurality of data repeater equipment, via the communication channel. In the same field of endeavor, Chen discloses an interface that cooperates with the bandwidth determination managing apparatus that integrally manages the bandwidths of a plurality of data repeater

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equipment, via the communication channel (Fig 2A-B, Ref 210 and 250 coupled via a communication channel).

Since, a method and system for using a centralized bandwidth manager is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a centralized bandwidth manager as disclosed by Chen into Gorguen's method and system. The motivation would have been to reduce the cost of controlling and maintain the network.

Regarding claim 4, Goguen fails to fully disclose alteration request means that makes a request for permitting the alteration of the first preset bandwidth value to the second preset bandwidth value, whereby the alteration request means communicates with the bandwidth determination managing apparatus to make this request and obtain permission, via the interface, and either permits or inhibits the bandwidth adjusting means to execute the adjustment, according to a decision made by the bandwidth determination managing apparatus. In the same field of endeavor, Chen discloses a method and system alteration request means that makes a request for permitting the alteration of the first preset bandwidth value to the second preset bandwidth value, whereby the alteration request means communicates with the bandwidth determination managing apparatus to make this request and obtain permission, via the interface, and either permits or inhibits the bandwidth adjusting means to execute the adjustment, according to a decision made by the bandwidth determination managing apparatus (See Fig 2A-B and Col. 2, lines 29 to col. 3, lines 15).

Since, a method and system for accepting or rejecting the request for bandwidth is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in

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the art at the time of the invention was made to apply a method and system for accepting or rejecting a request for a bandwidth as disclosed by Chen into Gorguen's method and system. The motivation would have been to prevent data loss of the other flows.

Regarding claim 6, Goguen fails to disclose a traffic amount counter for counting the number of the packets handled by the repeater processing unit. However, the examiner take an official notice that a packet counter is well-known and expected in the art. Since, Goguen suggests a byte counter that counting the number of bytes that repeater handled. Therefore, it would have been obvious to one of ordinary skill in the art the implement a packet counter into the teaching of Goguen. The motivation would have been to reduce the processing time.

Regarding claim 7, Goguen discloses a bandwidth determination unit that holds the preset bandwidth value, whereby the bandwidth determination unit inputs the preset bandwidth value to the bandwidth adjusting means and the repeater processing unit (Col. 6, lines 4-17).

Regarding claim 8, Goguen fails to disclose said traffic amount holding means divides the number of packets handled during the short-term period by the time corresponding to this period, and uses an obtained short-term average value as the traffic amount to be held. However, the examiner takes an official notices that a method for dividing the number of handled packets with a time in order to obtain an average value is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art to apply a method for dividing the number of handled packet with a time in order to obtain an average value into the teaching of Goguen because Goguen suggests an average value of the bytes that the router handled.

Regarding claims 15-17, Goguen fails to fully discloses the alteration decision means holds a plurality of predetermined conditions, decides whether the second preset bandwidth

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value satisfies all the conditions or not, and permits the alteration of the first preset bandwidth value to the second preset bandwidth value only when the second preset bandwidth value satisfies all the conditions. However, Chen discloses a method and system for permitting the router to allocate a bandwidth for the flow if the request satisfies one or more conditions (Col. 7, lines 16-56).

Since, Goguen suggests a method and system for changing the bandwidth of a path based on a configuration value in a table (See col. 8, lines 6-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for permitting a router to adjust the bandwidth if the conditions are met as disclosed by Chen into Goguen's method and system. The motivation would have been to prevent data loss of the other flows.

#### ***Allowable Subject Matter***

6. Claim 11-14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'Steven HD Nguyen', is written over the printed name.

Steven HD Nguyen  
Primary Examiner  
Art Unit 2616  
June 5, 2006